

LOCAL RULES

FOUNTAIN CIRCUIT COURT

IN THE MATTER OF THE RULES OF PRACTICE OF THE FOUNTAIN CIRCUIT COURT, 61ST JUDICIAL CIRCUIT OF INDIANA

Per T. R. 81 of the Indiana Rules of Civil Procedure, it is further **ORDERED** that the following local rules relating to practice and procedure of the Fountain Circuit Court be adopted, effective the 1st day of January 2003.

Susan Orr Henderson, Judge, Fountain Circuit Court

OFFICERS OF THE COURT

Susan Orr Henderson, Judge

Mariann Martin, Clerk

Mary Elaine Denhart, Court Reporter

Dianne Cotten, Court Bailiff

Robin Hegg, Chief Probation Officer

Randy Hankins, Probation Officer

Sherri Samuels Jacobs, Administrative Assistant to Probation Officer

Donald E. Gibson, Commissioner, Small Claims-Traffic Division

Susie Keller, Court Reporter, Small Claims-Traffic Division

LOCAL RULES OF CIVIL PROCEDURE

RULE 1: APPEARANCES AND WITHDRAWAL OF APPEARANCES:

(a) All pleadings shall show the name and address, telephone number, FAX number, and attorney number of the individual attorney or attorney filing the same. All attorneys for a defendant or a third party shall file a formal written appearance. Any pleading not signed by at least one attorney appearing of record as required by T.R .11 shall not be accepted for filing by the Clerk, or if inadvertently accepted for filing, shall, upon discovery of such omission, be stricken from the record.

(b) A rubber stamp or facsimile signature on the original of any pleading shall not be acceptable except with leave of Court.

(c) Notices of court entries or court action shall be sent by the Court to counsel at the address appearing in the formal appearance, and shall constitute notice to the parties. Non-local attorneys shall see that the cause is properly looked after, or shall employ local counsel for such purpose, and shall not depend upon the Clerk to look after such cause or perform duties of acting counsel therein.

(d) Counsel seeking to withdraw their appearance in any action shall file a motion requesting leave to do so. Such motion shall fix a date for such withdrawal, and thereafter satisfactory evidence of a least 10 days written notice to the client in advance of such date of withdrawal shall be filed with the Court.

(e) A withdrawal of appearance accompanied by the simultaneous appearance of new counsel shall constitute a waiver of paragraph (d) above.

(f) If withdrawing counsel is not able to locate his client, he must show satisfactory proof to the Court of a bona fide effort to so locate the client.

(g) In criminal cases, a withdrawal of appearance may not be granted without a hearing conducted in open court in presence of the defendant, unless the reason of such withdrawal is the inability to locate and communicate with the defendant, and in such event, a warrant shall forthwith be issued for the defendant.

(h) This rule shall apply to all proceedings in the Court, including probate and guardianship proceedings.

RULE 2: FEES AND MISCELLANEOUS CHARGES:

(a) In the event service of process or pleadings is done by publication, or by certified or registered mail, causing additional court costs, the same shall be prepaid to the Clerk.

(b) Counsel filing pleadings by mail, or otherwise, and who request the return of file-marked copies, shall furnish the Clerk with self-addressed envelopes with sufficient postage attached for such return.

(c) All miscellaneous charges or expenses not properly chargeable as costs, including charges for copying, for FAX, postage, etc. shall be paid in advance by the party incurring such charges.

RULE 3: SERVICE OF PROCESS

(a) A praecipe shall be prepared in all cases as provided by T.R. 4.

(b) If service is to be had by certified mail, the party requesting such service shall provide the Clerk with a duly addressed envelope and prepare a return receipt with the cause number and name of cause shown thereon.

(c) If summons, citations, etc. are to be served by personal service, the party seeking such service shall provide the Sheriff with the name of the person to be served, the address of such person, including specific driving instructions, place of employment and work shift if service is to be had at place of employment, and name and telephone number of the attorney seeking service.

RULE 4: FORM AND STYLE OF PAPERS, NUMBER OF COPIES, FILING AND SERVICE:

(a) Persons seeking service of any paper or pleading shall furnish the Clerk with sufficient copies as may be necessary for such service.

(b) The files of the Clerk shall be kept under the system commonly known as "flat filing", and all papers presented to the Court for filing shall be 8" X 11", flat and unfolded. Original oversized documents may be filed as part of a pleading, but shall be reduced to 8" X 11" where possible. Original documents shall be submitted on rag bond paper. Typewritten pages shall have no covers or backs and shall be fastened together at the top, but at no other place. All pleadings shall be typewritten on unlined paper, one and one-half spaced with double spacing between paragraphs.

(c) All orders and entries shall be prepared by counsel except as may be ordered by the Court. In those matters involving routine or simple orders or entries, the same shall be prepared in advance and submitted to the Court. In the event the order or entry is complicated and cannot be prepared in advance, it shall be prepared immediately after the rendering of the order.

(d) The attorney responsible for securing the order or entry shall furnish the Court with a service list, and furnish sufficient copies for service on each affected party, together with envelopes addressed with sufficient postage for such service.

(e) All orders or entries submitted to the Court shall be in sufficient number that the original may be retained by the Clerk, and a copy mailed to each affected party.

(f) All papers may be filed by FAX transmission, and the Court may issue orders by FAX transmission. Such FAX transmissions shall be considered as mailed for purposes of computing time under the Indiana trial rules.

(g) In any cause in which a Special Judge is presiding, counsel shall furnish such Judge with copies of all matters filed in the cause at the time of filing, and shall include such in the certificate of service filed with such paper. Counsel shall also forward to such Special Judge copies of all papers filed in the cause prior to the qualification of the Special Judge upon the qualification of such Judge.

(h) No person shall withdraw an original paper or the Court file from the custody of the Clerk except by order of Court and upon leaving a proper receipt therefore.

(i) The Clerk may make such other rules necessary for the retention of all papers properly in the Clerk's custody.

**RULE 5: MOTION PRACTICE, HEARINGS, ATTORNEY CONFERENCES,
DISCOVERY FILINGS, RESOLUTIONS OF PENDING MOTIONS, ETC.:**

(a) Motions to Dismiss per T.R. 12, for judgment on the pleadings, for more definite statement, to strike, or motions per T.R. 37 shall be accompanied by a separate supporting brief. Unless the Court otherwise directs, an adverse party shall have 15 days after service of the initial brief in which to serve and file an answer brief, and the moving party shall have 7 days after service of the answer brief in which to serve and file a reply thereto. Each motion shall be filed separately; alternative motions filed together shall

each be named in the caption on the face. Failure to file an answer or reply brief within the time prescribed shall subject the motion to summary ruling. A party may request an oral argument upon the motion, but the granting of the same is discretionary with the Court, except with respect to motions for summary judgment.

(b) Per T.R. 5, no matters involving discovery shall be filed with the Clerk, although notices of discovery are permissible, and in the event such matters, other than notices, are forwarded to the Clerk for filing, the Clerk shall refuse the same and may return them to counsel, or dispose of the same, but in no event are such matters to be file-marked and placed in the case file, without the authority of the Court.

(c) No extensions of time to file responsive pleadings shall be granted except upon written motion and order of Court.

(d) Parties shall immediately notify the Court of any reasonably anticipated settlement of a case or the resolution of any pending motion or matter.

(e) To curtail delay in the administration of justice, the Court shall refuse to rule on any and all motions involving discovery matters per TR 26-37 unless moving counsel shall first advise the Court in writing that after personal consultation and a bona fide attempt to resolve differences, counsel are unable to reach an accord.

(f) No mimeographed or otherwise duplicated forms containing interrogatories shall be filed or served upon a party unless all interrogatories on such forms are consecutively numbered and applicable to the case in which they are served.

(g) In the event of a motion to compel as to interrogatories or production or objections to such discovery are filed, such motion or objections shall set forth in full the interrogatory or request served, and the legal basis upon which the motion or objection is made. Failure to so state the legal basis for not responding to discovery will constitute a waiver of such objections.

(h) The number of interrogatories which may be served per T.R. 33 shall be limited so as to require the answering party to make no more than 125 responses, unless, due to complexity of the issues in the case, the Court waives this requirement.

RULE 6: CONTINUANCES IN CIVIL CASES:

- (a) One continuance may be granted in any case of any trial or hearing setting by agreement of the parties or their counsel upon oral or written motion.
- (b) In the absence of an agreement, no continuance will be granted except upon written verified motion.

RULE 7: PRE-TRIAL OR STATUS CONFERENCES; PRE-TRIAL PROCEDURES:

- (a) The fundamental purpose of pre-trial procedure as provided in TR 16 is to simplify issues and facilitate the trial of issues to be tried, and is contemplated that all parties will comply with T.R. 16.
- (b) It is anticipated that pre-trial procedure will consist of a status conference after issues are closed and a reasonable time for preliminary discovery procedures. Such status conferences may be had by conference telephone call, and all counsel shall be prepared at the same to set cut-off dates for discovery, the exchange of preliminary witness and exhibit lists, setting hearing dates for pending motions or motions to be filed, discussing alternative methods to resolve disputes, and setting trial date. A final pre-trial conference shall be scheduled for the cause at the status conference.
- (c) A final pre-trial conference shall be attended by all counsel expecting to participate at the trial of the case, and unless appearing, counsel shall not be permitted to participate in the trial, except by order of Court.
- (d) Unless otherwise ordered, final pre-trial conferences will be used in part as settlement conferences, and counsel shall have clients available in person or by telephone for such purpose.
- (e) Extensions of cut-off dates set in pre-trial procedure shall not be altered except by order of Court.
- (f) All trial briefs or preliminary trial motions shall be filed at least 5 days prior to trial;

(g) All exhibits shall be pre-marked by counsel prior to trial, and an index of such pre-marked exhibits prepared and exchanged, with a copy to the Court, and counsel shall stipulate as to the admissibility of any such exhibits prior to trial and advise the Court as to such stipulated exhibits prior to trial.

(h) Unless otherwise ordered by the Court, in all jury cases, all exhibits to be offered into evidence and to be read by the Jury shall be duplicated by the party offering the same so that each juror shall have a copy to read at the time the same is offered and admitted into evidence. Such copies shall be made prior to trial and counsel shall have the same available for opposing counsel to inspect prior to trial.

(i) All proposed preliminary instructions to be tendered by the parties shall be submitted to the Court at least 5 days prior to trial.

(j) Copies of the names and addresses of all jury panels called for trial, together with information forms for said panel, and copies of the Court's proposed preliminary instructions shall be available in the Office of the Court Bailiff at least 5 days prior to trial. Counsel wishing the same to be mailed to them should furnish to the Bailiff an envelope, with sufficient postage, for such purpose.

RULE 8: JURY SELECTION:

(a) The purpose of voir dire examination of prospective jurors is to select a fair and impartial jury, to discover any basis for challenge for cause, and to gain knowledge for the exercise of peremptory challenges. No voir dire examination shall include, unless otherwise ordered by the Court: (1) Questions previously asked by the Court or counsel and answered; (2) Questions based upon anticipated instructions as to the law of the case; (3) Questions based upon hypothetical facts, which are in substance, counsel's version of the facts of the case being tried; (4) Questions relating to insurance carriers or insurance coverage of any type, including asking a prospective juror if he or she is an officer or director of some insurance company.

(b) Jury information forms of prospective jurors shall be on file with the Court Bailiff, and copies of same shall be given to all parties prior to trial, but it shall be the responsibility of counsel to obtain them from the Bailiff and to review the same prior to commencing jury selection, and no questions shall be asked of prospective jurors which are adequately answered in such jury information forms.

(c) The Court shall swear the entire panel of prospective jurors, and all of the panel shall remain in the courtroom during the entire voir dire examination, unless otherwise ordered by the Court. The voir dire examination shall commence with the Court conducting the same, asking questions of the entire panel with a view of establishing a basis for challenge for cause.

(d) Any challenge for cause must be made when such cause becomes known, or the same will be deemed waived.

(e) Upon the Court completing its examination of the panel as a whole, a panel of 6 or 12, as the case may be, shall then be seated in the jury box, and counsel may be permitted to supplement the Court's examination on subjects not covered by the Court or in the Jury information forms. Provided, however, the Court, in its discretion, may conduct the entire voir dire examination. The length of any supplemental examination by counsel shall be reasonable, unless a specific time limit is fixed by the Court. All questions of counsel shall be directed so far as reasonably possible to the panel as a whole rather than to individual jurors.

(f) The party having the burden of proof shall proceed first with such supplemental examination, and the opposing side shall follow, and except for good cause shown, each side shall have only one such examination of such seated panel.

(g) After each side has completed its supplemental examination, peremptory challenges shall be made in writing on a form supplied by the Court, and then handed to the Bailiff, and then given to the Court, and the Court will then excuse the challenged juror. Such challenges shall be made without comment by counsel, and without consultation between opposing sides. If no such challenge is made, counsel shall give to the Court a written acceptance of the Jury as seated on a form provided by the Court. Jurors not challenged as set forth herein shall be deemed accepted.

(h) If peremptory challenges are made, and challenged jurors excused, replacement jurors shall then be seated in the jury box, and each side shall have an opportunity to a supplemental examination of the replacement jurors only, as in paragraph (d) above, with peremptory challenges to be then made as in paragraph (f). Such supplemental examination and challenging shall be limited to the replacement jurors. Additional replacing of jurors, examination thereof and challenges shall be made in like fashion until a Jury is selected. Alternate jurors, if any, shall then be likewise examined and selected.

(i) No juror left unchallenged peremptorily may be thereafter reexamined or challenged, except for good cause shown; and the passing of any juror or the failure to peremptorily challenge that juror, shall be deemed a waiver of the right to so challenge the same, except for good cause shown.

(j) A peremptory challenge of the same juror by both sides shall count against the number of challenges for each side.

(k) Only one attorney for each party shall conduct the entire voir dire examination for that party.

RULE 9: TRIALS:

(a) Indiana Pattern Jury Instructions shall be used where applicable.

(b) All requests for special instructions submitted in accordance with TR 51 shall be submitted to the Court not later than the beginning of trial. Counsel shall have the right to submit additional instructions during trial on matters which could not reasonably have been anticipated in advance of trial. Such requests for special instructions shall contain citations to supporting authorities. Instructions need not be exchanged by counsel until after the evidence has been submitted, and a formal tender of proposed special instructions made.

(c) When more than one case is set for trial on a given trial date, the case set as a second or third setting shall be required to stand for trial if counsel is given 14 calendar days notice that the case first set has been settled.

(d) All proposed findings of fact and conclusions of law in cases where ordered shall be prepared and submitted by counsel at a time to be set by the Court.

(e) Opening statements of counsel shall contain a brief summary of the substance of the evidence intended to be offered with necessary explanations in clear and concise form, and the opening statements shall not be used to impose or convey proof by means of unsworn facts or to argue items of evidence or discuss the law except insofar as it is necessary to give the Jury an understanding of the theory of the case.

(f) Opening statements and final arguments shall not be recorded unless the parties make a special request therefore and the Court makes an order requiring such recordation.

(g) In the examination of any witness, one attorney for each party, and only one, shall conduct the entire examination of each individual witness, and said attorney shall make all objections, offers to prove, or other motions incidental to such examination.

RULE 10: DEPOSITIONS, CUSTODY AND DISPOSITION OF EXHIBITS:

(a) Depositions filed with the Clerk or Court are published upon filing, and at any time thereafter, the deposition may be opened upon order of the Court.

(b) Depositions of experts, listed on a party's witness list, may be taken for the purpose of using the same as evidence at trial after the date for cutting off discovery, if the same can be completed and filed within a reasonable time before commencement of trial.

(c) After being marked for identification all documentary evidence offered or admitted into evidence shall be placed in the custody of the Court Reporter, unless otherwise ordered by the Court.

(d) All exhibits placed in custody of Court Reporter shall be taken away by party offering them in evidence, except as otherwise ordered by the Court, within 90 days after the case is decided, unless an appeal is taken. In all cases in which an appeal is taken exhibits shall be taken away within 90 days after the appeal is concluded. At the time of removal, a detailed receipt shall be given to the Court Reporter and filed.

(e) If the parties or counsel fail to remove exhibits within the time prescribed, the exhibits may be disposed of by the Court.

RULE 11: LIBRARY:

No book shall be removed from the Court library without a receipt being left therefor with the Bailiff; and the Court computer shall not be used for research purposes without notifying the Court or the Bailiff of such use.

RULE 12: DISSOLUTIONS OF MARRIAGE, PATERNITY ACTIONS, URESA ACTIONS:

- (a) Except with consent of the Court, no hearing, final or provisional, shall be had without all parties present in Court.
- (b) The Court may appoint guardians ad litem or CASA's for the minor children involved in a dissolution proceeding, and the costs thereof shall be borne equally by the parties unless otherwise ordered by the Court;
- (c) In all dissolutions involving minor children, the parties shall comply with the Standing Order to Attend Dissolution Workshop, and shall cause proof of such compliance to be filed with the Court prior to any final hearing. This Rule shall apply to Summary Dissolution of Marriage Decrees.
- (d) In all dissolutions involving minor children, each party shall submit to the Court the appropriate Worksheet provided in the Indiana Support Guidelines. This Rule shall apply to Summary Dissolution of Marriage Decrees.
- (e) In all dissolutions involving minor children, the parties shall comply with the Indiana Support Guidelines with respect to support of the children, and shall further comply with the Parenting Time Guidelines adopted by the Indiana Supreme Court.
- (f) In the event marital counseling is ordered by the Court, in addition to the Dissolution workshop, such counseling shall be at the expense of the parties, and the parties shall cause copies of reports of such counseling to be filed with the Court.
- (g) Where applicable, all of the Rules above shall apply to Paternity actions and URESA actions, Petitions for Support, etc.

- (h) At the time of all Dissolution Decrees, where applicable, counsel shall submit proposed Child Support Income Withholding Orders .
- (i) The Petition for Dissolution shall include the social security numbers of the parties, and children (if available).

RULE 13: DUTIES OF ATTORNEYS, COURT ROOM ETIQUETTE:

- (a) It is the responsibility of counsel to prepare judgments and orders as may be required by the Court.
- (b) Attorneys have the responsibility to keep themselves informed of the status of the cases in which they appear. The Court may, in its discretion, furnish copies of CCS printouts or notices from time to time, but it is counsel's responsibility to keep themselves informed as to all rulings, notices of settings, and current status of matters in which they appear.
- (c) Attorneys shall be punctual.
- (d) Attorneys shall be dressed in appropriate business attire when appearing in Court.
- (e) Attorneys shall advise their clients and witness concerning formalities in Court and etiquette in Court, and shall further advise them of the proper attire for appearances in Court. Casual and leisure attire are not proper apparel and do not conform to courtroom decorum.
- (f) No person shall smoke, chew gum or tobacco, eat confections, read newspapers or other publications, knit, attend crying children, converse or indulge in any other similar conduct which might be offensive or distracting to any person or the Court when appearing in the Court.
- (g) No person shall curse or use offensive language in the courtroom or in the offices of the Court, Court Reporter, or Court Bailiff.
- (h) All attorneys releasing or satisfying a judgment shall notify the Court or Clerk in writing of such release or satisfaction.

RULE 14: DEFAULT JUDGMENTS:

(a) Default judgments shall be taken as provided by T.R. 55, provided that no hearing on any motion for default judgment will be had, where an appearance, either by an attorney or pro se, has been entered, without at least 10 days notice being given to the defendant.

(b) Default judgments for failure to plead shall not be entered except after affidavit or motion of moving party, and upon 10 days notice to the defendant's counsel.

(c) Where the case is founded on a written instrument, such as a note or contract, the original of the instrument must be produced to the Court before a default judgment will be rendered thereon. No copy of such instrument may be used, unless an affidavit is filed that the original is lost or destroyed.

(d) No default judgment will be entered except after motion and hearing on such motion; provided that the Court may permit the moving party to present evidence by affidavit in support of such motion. Such affidavits, as well as non-military affidavits, shall certify that the affiant is familiar with the defendant and the matter sued upon, and shall certify as to the current amounts due in said matter. Such affidavits shall be signed by representatives familiar with the matter and not by counsel for the movant, unless otherwise permitted by the Court.

RULE 15: PROCEEDINGS SUPPLEMENTAL, ATTACHMENTS, ORDERS IN GARNISHMENT:

(a) Hearings on motions for proceedings supplemental will be set at the time of the filing of the motion, and counsel shall secure a hearing date from the Court at the time of such filing;

(b) An Order to answer interrogatories may be either separate or a part of the Order setting the hearing on the motion for proceedings supplemental, and shall notify the garnishee defendant that a judgment has been secured against the judgment defendant, the amount of the judgment, the date the hearing is set on the pending motion for proceedings supplemental, and advising that the garnishee defendant may appear at said hearing or file written answers to the interrogatories at a date prior to said hearing. Interrogatories to a garnishee defendant shall be prepared by counsel for the judgment

plaintiff, with appropriate blanks after each interrogatory for the response of the garnishee defendant.

(c) Failure of a judgment defendant or garnishee defendant to appear or answer interrogatories in a duly served Order of the Court may result in a bench warrant being issued by the Court for such defendant; provided however, the judgment plaintiff must first file a Contempt Citation, schedule a hearing thereon, and have the same served, and such bench warrant will then only issue if such defendant fails to appear or otherwise comply with the Court Order. In the event a judgment defendant is arrested, a hearing on the contempt for failure to appear on the Contempt Citation will be scheduled at the convenience of the Court, after the Court notifies the judgment plaintiff of such arrest, and the time of the hearing.

RULE 16: BANKRUPTCY, NOTICE OF STAY:

Whenever any party receives an order from a Bankruptcy Court staying proceedings, it shall be sufficient for the party to file a notice of such Order with the Court, which notice shall contain the name of the party, the cause number of the bankruptcy proceeding and the date of the issuance of the stay.

RULE 17: SPECIAL RULES OF CIVIL PROCEDURE, PER T.R 79 (H)

Pursuant to Trial Rule 79 (h) of the Indiana Supreme Court, the Fountain Circuit Court makes the following rules regarding the reassignment to special judges in all matters other than criminal causes in the Fountain Circuit Court:

- 1) The following individuals have been contacted by the Court and have agreed to serve in the event it becomes necessary to reassign a civil case, or other matter in which a special judge may be appointed, other than a criminal case: Hon. David A. Ault, Judge, Montgomery Superior Court, Hon. Vincent F. Grogg, Senior Judge, Hon. Robert M. Hall, Judge, Warren Circuit Court, Hon. Peggy Lohorn, Judge of the Montgomery County Court, and Hon. Thomas K. Milligan, Judge of the Montgomery Circuit Court.
- 2) Said contact was made after an opportunity of consulting with other judges in the administrative district for the Fountain Circuit Court per ADR 3 (a) and after considering

the effective use of judicial resources within said administrative district, and the accessibility of said judges per T.R..79(j).

3) Accordingly, the Court now names the following panel to serve as special judge per T.R..79(h): Hon. David A. Ault, Hon. Vincent F. Grogg, Senior Judge, Hon. Robert M. Hall, Hon. Peggy Lohorn, and Hon. Thomas K. Milligan, to be selected as required on a rotating basis in alphabetical order.

4) In the event the Judge disqualifies herself in any proceeding, other than a criminal cause, involving the Wallace law firm in which the Judge has determined she has a conflict of interest, the cause shall immediately be assigned to Senior Judge Vincent F. Grogg. Should Sr. Judge Grogg be unable to serve for whatever reason, the procedure specified herein shall be used for the selection of a special judge with the exception that Sr. Judge Grogg shall be removed for the rotation.

5) In the event no judge is available to serve as special judge for the assignment or reassignment of a civil case or other matter in which a special judge may be named, such case shall then be certified to the Indiana Supreme Court for the appointment of a special judge; in the event the presiding judge in a civil matter per this rule should conclude that the unique circumstances presented by the case requires the appointment of a special judge by the Indiana Supreme Court, the presiding judge may request the Indiana Supreme Court for such appointment.

RULE 18: COURT REPORTER:

The following is an abbreviated version of the local rule per Administrative Rule 15, Indiana Supreme Court. The full text is available in the Clerk's office:

(a) The official court reporter shall work under the control, direction and direct supervision of the Court.

(b) The maximum per page fee that the Court Reporter may charge for a county indigent transcript, a state indigent transcript and private transcript is \$3.50 per page.

SPECIAL RULES OF CRIMINAL PROCEDURE

RULE 1: APPEARANCES :

- (a) A written appearance shall be filed in all criminal cases.
- (b) Withdrawals of appearance shall comply with the rules relating to withdrawals of appearance in civil cases where applicable, and shall be at the discretion of the Court.

RULE 2: BAIL AND BAILABLE OFFENSES:

- (a) Bail is fixed per the following schedule:

Class A felony	\$75,000.00
Class B felony	\$25,000.00
Class C felony	\$15,000.00
Class D felony	\$10,000.00
Class A Misdemeanor: OVWI; Poss. Of Marijuana; Other drug related A Misd.	\$6,500.00
All other Class A Misd.	\$3,000.00
Class B Misdemeanor	\$1,000.00
Class C Misd..10% B.A.C.	\$6,500.00
All other Class C Misd,	\$500.00

This bail schedule may be modified at the discretion of the Court. If habitual offender or habitual substance offender allegations are filed, bail schedule may be modified. If multiple non-related offenses are filed in same cause number, or accused is known to be on probation or parole, this schedule may be modified.

- (b) No person shall be released on his or her own recognizance without first securing authority of the Court for such release.

(c) The Sheriff shall have the authority and discretion to detain any person under the influence of intoxicating beverages or drugs until such time as that person can be safely released without danger to himself or others.

(d) An accused may post bond in any one of four ways: (1) Professional surety bond (2) Real property bond (3) Full cash bond, or (4) By depositing with the Clerk cash in an amount of 10% of the bond set by the Court, unless the Court prohibits such procedure.

(e) If an accused posts bond per (d) (4), the same shall be made on a form supplied by the Court, which form shall be completed in its entirety. The Clerk may retain 10% of the cash deposited as an administrative fee, to be deposited in the General Fund of the County. Such fee shall not be less than \$10.

(f) In the event the accused fails to appear, any monies deposited with the Clerk, may, upon Order of Court, be transferred to the Extradition Fund of the Court to be used for the return of such accused or any other fugitive.

(g) Monies in the hands of the Clerk as bail per (d)(4) after deducting the administrative fee, shall be returned to the person posting said bail upon the meeting of the conditions of the bond, and upon Order of the Court, and the Court may order that said funds be applied to court costs, fees, fines, restitution, etc. as may be applicable

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RULE 3: RELEASE OF INFORMATION:

All personnel of the Clerk's Office and the Judge, as well as the Prosecuting attorney are prohibited from disclosing to any person, without the authority of the Court, information relating to the pending criminal matter that is not part of the public records of the Court, including but not limited to arguments or hearings held in chambers or otherwise outside the presence of the public.

RULE 4: INITIAL HEARINGS, OMNIBUS HEARINGS:

(a) Initial hearings may be waived by the defendant, with leave of the Court, and in misdemeanors, counsel may waive the same without defendant being present, with leave of Court, but defendant shall be present in person in all felony initial hearings.

(b) Unless otherwise ordered, after initial hearing, an omnibus hearing shall be set in all criminal cases, which hearing date shall be a deadline for completing preliminary discovery, and for submitting plea agreements for the approval of the Court.

(c) Except with leave of Court, defendants shall be present in person at all omnibus hearings.

RULE 5: TRIALS:

All criminal trials shall be conducted per the rules set forth by this Court for civil cases, including but not limited to the method of selecting jurors.

RULE 6: CONTINUANCES:

No continuance of any initial hearing or omnibus hearing shall be except by agreement or upon written motion. No continuances of any trial setting shall be had except upon written motion.

RULE 7: DISCOVERY:

(a) Civil rules of discovery shall be used in criminal proceedings so far as the same are applicable.

(b) Reciprocal order of discovery shall be entered at the time a not guilty plea is entered.

RULE 8: SPECIAL RULES OF CRIMINAL PROCEDURE:

Pursuant to C. R. 2.2 of the Indiana Supreme Court, the Fountain Circuit Court makes the following rule regarding reassignment to special judges in the Fountain Circuit Court:

The following individuals have agreed to serve in the event it becomes necessary to reassign a felony or misdemeanor case in the Fountain Circuit Court: Hon. Robert M. Hall, Judge, Warren Circuit Court, Hon. Bruce V. Stengel, Judge, Vermillion Circuit

Court, Hon. Vincent F. Grogg, Senior Judge, Hon. David Ault, Judge, Montgomery Superior Court, and Hon. Thomas Milligan, Judge, Montgomery Circuit Court.

(a) By order of the Indiana Supreme Court, pursuant to I.C. 33- 2.1-7-8 temporarily transfers to above judges to the Fountain Circuit Court for the purpose of reassignment of felony and misdemeanor cases.

(b) In the event it becomes necessary to reassign a felony or misdemeanor case, the judges will be reassigned in consecutive order to the above named judges.

(c) In the event no judge is available for assignment or reassignment of a felony or misdemeanor case, such case shall then be certified to the Indiana Supreme Court for the appointment on a special judge. In the event the judge presiding in a felony or misdemeanor case concludes the unique circumstance presented in such proceeding require appointment by the Indiana Supreme Court of a special judge, this presiding Judge may request the Indiana Supreme Court for such appointment.

RULES OF PROBATE PROCEDURE

RULE 1: NOTICE:

(a) Whenever notice by publication and/or written notice by U. S. Mail is required to be given, the attorney shall prepare such notice with sufficient envelopes required for such mailing, with postage and addresses, and shall ensure that such notice is properly published and/or served. All notices shall comply with statutory requirements. It shall be the duty of the attorney to ascertain and provide adequate proof of notice. In the event the Clerk is to serve the notice, sufficient copies of the notice, together with a praecipe and a form of proof of notice shall be furnished to the Clerk.

(b) Copies of petitions shall be included with all notices where the hearing involved arises from matters contained in the petition, and if the Clerk is to send the notices, sufficient copies of such petition shall be furnished to the Clerk.

(c) Notice of the opening of an estate shall be by regular U. S. Mail to all readily ascertainable creditors.

RULE 2: FILING OF PLEADINGS:

- (a) When pleadings are filed by mail, or left with the Court for filing, and counsel desires a copy forwarded to him, counsel shall include a self-addressed envelope with sufficient postage attached for such purposes.
- (b) Routine pleadings, such as Inventories, Inheritance Tax schedules, etc., may be filed with the Clerk for transmittal to the Court; all other pleadings are to be filed directly with the Court.
- (c) The attorney is required to prepare orders for all proceedings except when expressly directed otherwise by the Court; and in every event, four copies of a proposed Inheritance Tax Order shall be left with the Court at the time of the filing of the tax schedules.
- (d) Every pleading, including inventories, petitions, accounts shall be signed and verified by the fiduciary and signed by the attorney for the fiduciary.
- (e) All pleadings shall contain the name of the attorney, together with address., telephone number and attorney identification number.
- (f) The initial petition to open an estate or guardianship shall contain the social security number, date of birth and address of the fiduciary.
- (g) The Clerk shall not prepare any pleadings, orders, petitions, etc. for fiduciaries seeking to act pro-se or for any attorneys and the Clerk shall not furnish files or papers from other probate matters for such persons to use as a model.

RULE 3: BOND:

- (a) Fiduciaries may serve without bond and upon oath only at the discretion of the Court; but in every supervised Estate the fiduciary may, in every guardianship the guardian shall be required to file a bond of not less than the value of annual rents and profits, the value

of all property of the estate or guardianship in such amount and upon such conditions as the Court may require, except as hereinafter provided:

1) Where, under the terms of a Will, the testator expresses an intention that bond be waived, the Court may set the bond in an amount adequate to protect creditors, taxing authorities and devisees.

2) Where the fiduciary is an heir or legatee of the Estate, the bond may be reduced by said fiduciary's share of the Estate.

3) Where the heirs or legatees have filed a written request that the fiduciary serve without bond, the bond may be set in an amount adequate to protect creditors and taxing authorities.

4) In an unsupervised estate, bond may be required at the discretion of the Court.

5) No bond shall be required in any estate or guardianship in which a corporate fiduciary qualified by law to serve as such is serving as a fiduciary or co-fiduciary.

(b) No attorney will be accepted as surety on any bond unless as surety for a family member.

(c) In lieu of all or part of the bond as *may* be required by 3.1. the fiduciary may restrict transfer of or part of the estate or guardianship liquid assets by placing those assets in a federally insured financial institution with the following restriction placed on the face of the account or document:

**NO PRINCIPAL OR INTEREST SHALL BE WITHDRAWN WITHOUT
WRITTEN ORDER OF THE FOUNTAIN CIRCUIT COURT.**

(d) All petitions to open an estate shall set forth the probable value of the personal property plus the estimated rents and profits to be derived from the property in the estate or guardianship, and In addition, in a guardianship, the petition shall further state the annual income, pension benefits, etc., of the alleged incapacitated person.

(e) The name and address of the insurance agency providing the corporate surety shall be typed or printed on all corporate bonds.

RULE 4: INVENTORY:

(a) An inventory shall be filed by the fiduciary in all supervised estates and guardianships as follows: Estates, within 60 days; Guardianships, within 90 days for permanent guardians and within 30 days for temporary guardians. All times relate to the date of the appointment of the fiduciary.

(b) In the event a partial inventory is filed, all subsequent inventories must contain a recapitulation of prior inventories.

RULE 5: REAL ESTATE:

(a) In all supervised estates and guardianships in which real estate is to be sold, a written appraisal prepared by a person competent to appraise real estate shall be filed with the Court with the filing of the Petition for Sale, unless such appraisal was filed with the inventory.

(b) All sales of real estate shall be made within six months of the date of the filing of the Petition for Sale, and if not, a current appraisal shall be filed with the Court.

(c) All deeds submitted to the Court for approval shall be signed by the fiduciary and the signature notarized prior to submission, and all such deeds shall be submitted with the Report of Sale of Real Estate, and copies of such deeds shall be also submitted at said time and filed with the Court.

(d) Whenever a Final Order reflects that real estate has vested in heirs or beneficiaries, that Order shall be recorded with the County Recorder of the County where such real estate is situate, and evidence of such recording shall be provided to the Court with the supplemental report.

RULE 6: SALE OF ASSETS:

(a) No petition to sell personal property will be granted unless a written appraisal, prepared by a person competent to appraise personal property, setting forth the fair market value thereof, is filed with the Court at the time of the filing of the Petition to Sell, unless such appraisal was filed with the inventory. This rule shall not apply to sales at public auctions.

(b) All sales shall be made within six months of the date of the filing of the Petition for Sale, and if not, a current appraisal shall be filed with the Court.

(c) No written appraisal shall be required for sale of assets traded in a market, the value of which is readily ascertainable, such as stocks, bonds, mutual funds, commodities, precious metals, etc.

RULE 7: ACCOUNTINGS:

(a) Whenever an estate cannot be closed within one year, an intermediate account shall be filed with the Court within 30 days after the expiration of one year and each succeeding year thereafter. Such account shall comply with the provisions of I.C. 29-1-16-4 and 29-1-16-6, and such account shall:

- (1) State facts showing why the estate cannot be closed and the estimated date of closing; and
- (2) Shall propose partial distribution of the estate to the extent that partial distribution can be made without prejudice to distributees and claimants.

(b) All guardianship accounts shall contain a certification of an officer of any financial institution in which the guardianship assets are held, verifying the account balance (see Appendix a)

(c) All social security or medicare benefits received on behalf of an incapacitated person shall be included and accounted for in the guardianship accountings unless Court

approval has been granted to allow such funds to be paid directly to a residential or health care facility.

(d) In all supervised estate and guardianship accountings, vouchers or cancelled checks for the expenditures claimed shall be filed with the accounting. No affidavits in lieu of vouchers will be accepted from individual fiduciaries. An affidavit in lieu of vouchers may be accepted by the Court from corporate fiduciaries provided it retains their vouchers on file or by an electronic recording device, and it agrees to make the same available to interested parties upon court order. The Court may require such institution to provide a certification from its Internal Audit Department verifying the accuracy of the accounting.

(e) In all accountings a notation shall be placed by each claimed expense item indicating the nature of the expenditure, e.g.

Bogota Drugs--toiletries

Henry Jones, M.D.--physical exam

Sam Smith--roof repair, residence of ward Tendercare Nursing Home--care of ward

(f) All accountings shall contain an itemized statement of assets on hand.

(g) Receipts or cancelled checks for all distributions shall be filed before a final accounting will be approved and discharge granted.

(h) All accountings shall follow the proscribed statutory format; informal handwritten or transactional accounts will not be accepted.

(i) All court costs shall be paid and all claims satisfied and released before hearing on the final account and a certification of the Clerk proving such payment shall be presented to the Court with the final account.

(j) The Federal Estate Tax Closing letter and the Indiana Inheritance Tax Closing letter(or counter-signed receipt) or a photocopy thereof showing payment of such taxes, shall be attached to the final account at the time of filing the same.

(k) No petition to close an estate as insolvent shall be made until an inventory has been filed; and no estate shall be closed as insolvent without due notice to all creditors and all other persons interested in the estate.

(l) In the event objections are filed to final accounts, the fiduciary shall have the burden of going forward with the evidence relative to said account at the hearing on said objections.

RULE 8: FEES OF ATTORNEYS AND FIDUCIARIES:

(a) No fees for fiduciaries or attorneys shall be paid without prior written order of Court.

(b) All **Orders** for fees in estates shall provide that such fees are to be paid only after approval of the final account. If payment of fees prior to approval of the final account would benefit the estate for tax purposes or some other purpose, personal representative may petition the Court for the approval of such fees.

(c) A guardian or guardian's attorney may petition for fees at the time of filing an inventory. No further petition for fees may be filed until a biannual, annual or final accounting has been filed.

(d) No attorney fee or fiduciary fee will be determined or authorized in any unsupervised estate.

(e) All petitions for fees shall conform to the fee guidelines fixed by the Court, and attached hereto as an appendix, and said petitions shall set forth specifically all services performed in detail as well as the amount of the fee requested and how the same was calculated. (See Appendix b)

(f) Where contracts for legal services have been entered into prior or subsequent to the opening of a supervised estate or guardianship, the Court reserves the right to approve or disapprove the fee contracts consistent with this Court's fee guidelines.

(g) Unjustified delays in carrying out duties by the fiduciary and/or attorney may result in the reduction of fees.

RULE 9: UNSUPERVISED ADMINISTRATION:

- (a) No petition for unsupervised administration shall be granted unless the consent requirements of the Indiana Probate Code is met, together with all other statutory requirements for unsupervised estates.
- (b) The petition requesting unsupervised administration shall set forth the estimated value of all property and the estimated liabilities of the estate.
- (c) No unsupervised estate will be closed unless the fiduciary complies with rules 7(i) and 7(j).
- (d) Once an estate is opened as unsupervised, the Court will not enter any orders relating to the administration of the estate, unless a petition is filed requesting that said estate will be treated thenceforth as a supervised estate. Once an estate moves from being unsupervised to supervised no order shall be entered authorizing a change back to unsupervised status.
- (e) No Order shall be entered after the filing of the Closing Statement approving the administration of the estate, as the Probate Code provides that such estates close automatically; provided however, the Court may enter an order acknowledging that more than three months have elapsed since the filing of the Closing Statement.
- (f) In all unsupervised estates, the Closing Statement shall include a certification as to Notices, the release of payment of claims, the payment of death taxes and expenses of administration, a report of distribution and accounting, and a report as to any deeds executed by the personal representative and shall be on a form substantially similar to the one attached in the appendix to these rules.
- (g) In all unsupervised estates immediately upon the execution of letters of administration, the personal representative shall provide a notice to all interested persons of their rights relating to an unsupervised estate as provided by the Indiana Probate Code, and shall file with the Clerk a proof of service of such notice, which notice shall be substantially similar to the one attached in the appendix to these rules.(See Appendix c)

RULE 10: TIMELINESS:

(a) The clear intent of the Indiana Probate Code is that estates and guardianships will be administered in an expeditious manner. To this end any and all requirements of that Code relative to time shall be strictly enforced. Fiduciaries and attorneys for fiduciaries shall have the responsibility of seeing that estates are administered upon in conformance with this intent. Failure to comply with this intent may, upon Order of the Court, subject the fiduciary and/or the attorney to removal or penalties for Civil Contempt.

(b) The Probate Code expressly requires the fiduciary in estates to examine the claim docket and to allow or disallow each claim filed against the estate within 5 months and 15 days after the date of the first published notice to creditors, and makes the fiduciary personally responsible for any costs caused by the failure to so comply with the Code, and all fiduciaries and attorneys shall comply with this Code provision. Upon disallowance of a claim, the fiduciary shall notify the Court so that the same may be transferred to the plenary docket as provided by law, and the fiduciary shall then have the responsibility of notifying the claimant or the claimant's counsel. Transferred claims shall carry the same cause number of the estate so long as the matter remains in the Fountain Circuit Court.

RULE 11: GUARDIANSHIPS:

(a) In all guardianship proceedings seeking to declare an adult incapacitated for any reason, the Incapacitated person shall be present at the hearing or sufficient evidence shall be presented showing that the alleged incapacitated person is unable to appear, or that said appearance would result in danger to his or her health.

(b) In all guardianship matters seeking to declare an adult incapacitated for any reason, a Physician's report by the physician treating the alleged incapacitated person or such additional evidence as the Court shall require, shall be presented at the hearing. No determination of incapacity shall be made without a supporting physician's report or evidence.(see Appendix d).

(c) At the time of the filing of the Petition for Guardian the Court shall appoint a guardian ad litem to represent the alleged incapacitated person, unless the Court finds that such an appointment is not necessary. The costs of such guardian ad litem maybe taxed as court costs in the guardianship. The duties of such guardian ad litem shall include at a minimum:

- A) Visit the person alleged to be incapacitated prior to hearing;
- B) Explain to the person the nature, purpose and legal effect of the appointment of a guardian;
- C) Explain to the person the procedure of the hearing and the person's rights in such hearing, including the right to contest the petition, the right to request limits on the powers of the guardian, the right to object to a particular person being appointed guardian, the right to be present at the hearing, and the right to be represented by a lawyer at the hearing;
- D) Inform the person of the name of the person seeking to be appointed guardian.
- E) Make determinations and inform the Court of those determinations as to: a) whether the person wishes to be present at the hearing, b) whether the person wishes to contest the petition, c) whether the person wishes limits to be placed on the powers of the guardian, and d) whether the person objects to a particular person being appointed guardian.

(d) Current reports filed by the guardian of the person shall state the present whereabouts of the incapacitated person and his general welfare at that time. If the incapacitated person is an adult, a statement of a treating physician shall be filed with all current accounts, setting forth the date of the last physical examination and verifying that the incapacity of the person remains unchanged since the date of the establishment of the guardianship or the date of the last current report, and the living arrangements of the incapacitated person.

(e) In every petition for the appointment of a guardian of the person of a minor (other than a routine "school guardianship") the following information shall be given:

- A) Present address of the child;

- B) The places where the child has lived within the past two years and the names and present addresses of the persons with whom the child has lived during that period;
- C) Whether, to petitioner's knowledge, any other litigation of any kind is pending concerning the custody of the child in Indiana or in any other jurisdiction;
- D) Whether, to petitioner's knowledge, any person not a party to the guardianship proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child;
- E) If the child is born out of wedlock, the name of the putative father of the child, and his address, and the name and address of the natural mother of the child.
- (f) Where warranted, the Court may request an investigation into the circumstances of the child, and pursuant to 11(c) may appoint a guardian ad litem to represent the interests of the child, or may seek the assistance of the Department of Public Welfare.
- (g) In the event the petition for guardianship is for the sole purpose of being a so-call “school guardianship” and is routine in its nature, the petition shall be so entitled, and the Court may waive the filing of any reports or the posting of any bond, and in such event, the “guardian” shall agree to immediately notify the Court if and when circumstances occur whereby such “school guardianship” is no longer necessary.
- (h) Nothing herein shall be deemed as amending, superseding or altering the Probate Rules and Regulations promulgated by the Veterans Administration of the United States, and every fiduciary and attorney shall comply with the same, if applicable.

GUIDELINES FOR DIVORCED PARENTS OF THE FOUNTAIN CIRCUIT COURT

It is usually in the child's best interest for each parent to have frequent, meaningful and continuing access to the children. A visitation agreement made by both parents is preferable to a court imposed solution. However, if one or both parents are unable to agree on visitation, the following guidelines shall be used in most cases. In situations where the non-custodial parent may not have had on going contact with the children, initial visitation may be shorter. Further, these provisions may not be applicable to very young children or in situations where geographical distances between parents make compliance impossible. The parents, in exercising visitation, should be flexible enough to adapt to the circumstances, the child's age, on-going activities of the child, and any religious holidays not set out below in Item 3.

STANDARD RULES FOR CUSTODY AND VISITATION SCHOOL INFORMATION

1. SCHOOL INFORMATION:

- (a) The custodial parent shall take the necessary action with the school authorities of the schools in which the children are enrolled to:
 - 1. List the non-custodial parent as the parent of the children.
 - 2. Authorize the school to release to the non-custodial parent any and all information concerning the children.
 - 3. Insure that the non-custodial parent receives copies of any notices regarding the children.
- (b) The custodial parent shall promptly transmit to the non-custodial parent any information received concerning parent-teacher meetings, schools club meetings, school programs, athletic schedules and any other school activities in which the children may be engaged or interested
- (c) The custodial parent shall promptly, after receipt of same, furnish to the non-custodial parent a photocopy of the child's grade or report card and a copy of any other reports concerning the child's status or progress.

(d) The custodial parent shall, when possible, arrange appointments for parent-teacher conferences at a time when the non-custodial parent can be present, and whenever possible they shall be attended by both parents.

2. **ILLNESS:** The custodial parent shall promptly inform the non-custodial parent of any illness of the children which shall require medical attention. Elective surgery shall be performed after consultation with the non-custodial parent. Emergency surgery necessary for the preservation of life or to prevent further serious injury or condition may be performed without consultation, provided however, if time permits, the non-custodial parent shall be consulted. In any event, the non-custodial parent shall be informed as soon as possible.

3. **REASONABLE VISITATION:** Whenever reasonable visitation for a non-custodial parent appears in an entry, it shall be defined as providing at a minimum for:

(a) **Weekends:** Visitation by the non-custodial parent on alternate weekends from Friday at 6:00 P.M. to Sunday at 6:00 P.M. (the beginning and ending times may be varied to accommodate the work schedule of the parties).

(b) **Mothers and Fathers Day:** The children shall be with the mother on Mothers Day of each year, and shall be with the father on Fathers Day of each year. In the event this provision requires the children to be with the custodial parent on a regular alternate weekend visitation of the non-custodial parent, the non-custodial parent shall return the children by 6:00 P.M. on the Saturday preceding the holiday, and in the event this provision requires the children to be with the non-custodial parent on a day not falling within a regular alternate weekend visitation, the non-custodial parent shall have the children from 6:00 P.M. on the Saturday preceding the holiday until 6:00 P.M. on the holiday.

(c) Holidays: The parents shall have the children on holidays as follows:

EVEN YEARS

CUSTODIAL PARENT

NON-CUSTODIAL PARENT

Easter

Thursday night at 6:00pm to
Sunday night at 6:00pm

Memorial Day

Friday night at 6:00pm to
Monday night at 6:00 pm

4th of July

July 3 at 6:00pm to July 5 at
6:00pm, unless the 4th falls on a
Friday, Saturday, Sunday, or
Monday when the visitation shall
commence on Friday at 6:00pm and
continue to end of weekend or end
of holiday, whichever is later at
6:00pm

Labor Day

Friday night at 6:00pm to
Monday night at 6:00pm

Thanksgiving

Wednesday night at 6:00pm to
Sunday night at 6:00pm

Christmas

Christmas Eve at noon
until 2:00pm on Christmas Day

Christmas Vacation

Christmas Day at 2:00pm until
6:00pm Jan.1

ODD YEARS

This schedule shall be reversed as to custodial parent and non-custodial parent.

Said holiday visitation shall have precedence over the regular visitation schedule, but shall not otherwise modify it (for example, if the holiday granted in any particular year to a non-custodial parent falls between the regular weekend visitation, the non-custodial parent will have visitation three (3) weeks in a row at that particular time, by that same token, if the holiday granted to a custodial parent falls on a regularly scheduled visitation weekend for the non-custodial parent, the non-custodial parent will have no visitation for three (3) weeks in a row).

(d) Summer visitation: The non-custodial parent shall have an extended visitation each summer to coincide with his vacation. However, the same shall not exceed four (4) weeks in duration. The non-custodial parent shall notify the custodial parent of the time thereof as soon as the vacation schedule at the non-custodial parent's place of employment is posted or decided upon.

(e) Rules for picking up and delivering children: Both parties shall be diligent in having the children ready and available at the appointed times and the transporting party shall be prompt in picking up and delivering the children, provided however, that the transporting parent shall have a grace period of fifteen (15) minutes for pick-up and delivering if both parties live within a distance of thirty (30) miles from each other. If the one way distance to be traveled is in excess of thirty (30) miles, the grace period shall be thirty (30) minutes. In the event the visiting parent exceeds the grace period the visitation for the weekend is forfeited unless prior notification and arrangements have been made, and except in cases where the visiting parent lives in excess of thirty (30) miles away and suffers an unavoidable breakdown or delay enroute and the visiting parent promptly notifies the custodial parent by phone of the delay. Repeated violations by either parent shall be cause for granting a modification of the custody order either by changing custody or curtailing visitation as the case may be.

(f) Unless prior arrangements are made, and if the parents reside within 40 miles from each other, the non-custodial parent shall pick up the children at the times specified and return them at the times specified, and the custodial parent shall have the children ready for visitation at the time they are to be picked up and shall be present at the home at that time and at the time the children are to be returned. The parents shall be flexible so far as making prior arrangements for persons other than parents to pick up and deliver the children.

(g) Unless otherwise agreed upon, if the parents live over 40 miles from each other, the non-custodial parent shall pick up the children and be responsible for the transportation costs of the same, and the custodial parent shall be responsible for picking up the children at the end of the visitation period and the transportation costs of the same. Both parents shall have the children ready for either pick-up or delivery, and be present at said times, or shall be flexible so far as making prior arrangements for persons other than parents to be present at time of pick-up and delivery

(h) If a child is ill, the custodial parent shall notify the non-custodial parent at least 24 hours prior to any visitation period, if possible. The non-custodial parent shall give 24 hours notice to cancel any visitation period. The time canceled by the non-custodial

parent is forfeited; the time canceled by the custodial parent may be made up at the option of the non-custodial parent at the earliest opportunity.

4 . **APPROPRIATE CLOTHES, ETC:** The custodial parent shall send with the children on visitation sufficient clothing and outer wear appropriate for the season to last the period of visitation (for weekend visitation, this shall consist of a minimum of two (2) extra sets of play clothes and one (1) dress outfit in addition to the clothes the children are wearing at the time of the start of the visitation). in the case of infants, the custodial parent shall send with the child sufficient bottles, formula, and diapers to last the visitation period. Violations of this requirement shall be deemed sufficient cause for a change of custody

5 . **RESTRICTIONS ON VISITATION:** Visitation does not include picking the children up and leaving them with a non-family member while the visiting parent pursues his own pleasures nor does it include taking the children to a bar for an extended period of time. Violations shall be deemed to be cause for curtailment of visitation.

6 . **CHANGE OF RESIDENCE OF CHILDREN:** Each of the parties shall keep the other informed at all times of the whereabouts of the minor children and neither party shall change the residence of the children to a location outside Indiana or 100 miles or more from Fountain County, Indiana, without having first received the approval of the Court to do the same.

7. **COMMUNICATIONS, MAIL, ETC.:** The custodial parent shall encourage free communications between the children and the non-custodial parent and shall not do anything to impede or restrict communications by phone or mail between the children and the non-custodial parent whether initiated by the children or the non-custodial parent. The mail between the children and the parent shall be strictly confidential between them and the parent, and shall not be opened or read by the other parent. This rule applies equally to the non-custodial parent when the children are on extended visitation with the non-custodial parent.

8. **CRITICISM:** Both parents shall refrain from criticizing the other parent in the presence of the children.

9. **COURT ENTRY:** Whenever the entry shall incorporate these “Standard Rules for Custody and Visitation” in the entry by reference subparagraphs (a), (b), (c), (d), and (e) of paragraph three (3) shall be the visitation granted by the Court

INFORMATION FOR PAYMENT OF SUPPORT

1. **PAYMENT TO CLERK:** The Court Order indicates that all support payments must be made to the Clerk. Please make certain that payments are not made directly to payee. Payment to the Clerk will guarantee that there will be a record of all payments, which can be produced in court at a later date if there is a dispute.

2. **PAYMENT IN PERSON:** You may make payments in person at the Clerk's Office on the second floor of the Fountain County Courthouse during the following hours:

Monday through Friday

8:00 A.M.- 4:00 P.M.

3 . **PAYMENT BY MAIL:** Payments also may be made by mail with a check or money order 14ADE PAYABLE TO THE CLERK, FOUNTAIN CIRCUIT COURT. Make certain that you include a notation that the payment is for support to: _____.

Fill in the blank with the name of the person who is receiving the support from you, not child's name. Also include the case number.

4 . **CASH PAYMENTS:** Payments should be made in cash only in person.

DO NOT send cash in the mail. The payor will immediately receive a receipt and a check will be issued to the recipient/payee of support.

5 . **PAYMENTS BY MONEY ORDER:** If payment is made by money order, a check will be issued to the recipient/payee of support immediately. If the payment is made in person, the payor will receive a receipt. If said payment is made by mail, the payor will have his/her money order copy or cancelled check for receipt. Clerk's Office does not mail back receipts unless payor provides SASE for such receipt.

6 . **PAYMENTS BY PERSONAL CHECK:** The State of Indiana operates the Fountain County Clerk's Office so far as support payments under the Federal ISETS Program. No payments made by personal checks made payable to the recipient/payee of support will be accepted. Personal checks made payable to the Clerk of the Fountain Circuit Court will be accepted. If you write a personal check payable to the Clerk's Office which is later returned by your bank, there will be an additional \$25.00 fee and you subject yourself to the bad check being turned over to the office of the Prosecuting Attorney of Fountain County. Once a bad check is written, the Clerk will no longer accept a personal

check for the payment of support from that payee and all further payments must be made by cash or money order. If you have any questions concerning this policy, inquiries can be made to the Clerk.

7 . **WHEN PAYMENTS GO TO DIVISION OF FAMILY AND CHILDREN**

SERVICES: When recipient/payee's money goes to the Indiana Division of Family and Children Services, the payment needs to be made in cash or money order, so as not to delay payee receiving payment.

8 . **KEEP A RECORD:** Persons receiving support should keep track of the support checks they received. They should complete the date received, the amount, and the support check number. This way if an error has been made or a support check has not been received, communication with the Clerk's Office staff will be easier.

9. **TELEPHONE CALLS:** Please **DO NOT** call the Clerk's Office to see if your support check has arrived prior to 3:00 P.M.

10. **SUPPORT SERVICE FEES:** I.C. 33-19-6-5 requires that the Clerk shall collect from persons required by Court Order to pay support and maintenance (SUPPORT PAYOR) a support service fee.

The amount of the fee is:

- (1) twenty dollars (\$20.00) for the calendar year in which the initial order is entered, unless the first payment is due after June 30 of that calendar year;
- (2) ten dollars (\$10.00) for the calendar year in which the initial order was entered, if the first payment is due after June 30 of that calendar year;
- (3) in each subsequent year in which the initial order or a modified order is in effect, twenty dollars (\$20.00) if the fee is paid before February 1, or thirty dollars (\$30.00) if paid after January 31.

The Clerk's Office staff will send you a notice of this fee at the end of each year, if we have a current address.

11. **CURRENT ADDRESSES:** Both the PAYOR and the RECIPIENT/PAYEE of support have the obligation to keep a current address on file at all times in the Clerk's Office. If you do not, you will not be able to receive notices, etc., or most important, your support check. Please do this in writing.

12. **CHANGE OF NAME:** If for some reason, your last name should change, please notify the Clerk's Office in writing so that we can keep your file up to date.

APPENDIX A
CERTIFICATION BY FINANCIAL INSTITUTION

TO: _____

FROM: _____

RE: GUARDIANSHIP OF _____
IN THE FOUNTAIN CIRCUIT COURT

In order to comply with the rules of the Fountain Circuit Court, I am required to file a Certification of the Account Balances of the above person for whom I am acting as Guardian. Please certify the balances and names of the accounts listed below. Dated this _____ day of _____, 200__.

Guardian

FOR BANK USE ONLY:

I hereby certify that on the _____ day of _____, 200__, there was on deposit in this institution to the credit of the Guardian, the following accounts and balances:

NAME OF ACCOUNT	ACCOUNT NO.	BALANCE
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

NAME AND ADDRESS OF FINANCIAL INSTITUTION:

Signature of Certifying Officer: _____
Printed: _____
Title: _____

Dated: _____

APPENDIX B
MAXIMUM FEE GUIDELINES
SUPERVISED ESTATES, GUARDIANSHIPS AND TRUSTS

The purpose of this maximum fee schedule is to:

- 1) Provide a guideline to assist the Court in setting fees in probate matters;
- 2) Furnish a guideline to attorneys so they can discuss fees that will be incurred with their clients at the onset of administration;
- 3) Assist the legal profession to arrive a fair and reasonable fee for probate matters.

This schedule is a maximum fee schedule and not a minimum schedule; consequently, requests for fees should not exceed these guidelines, and it is expected that in many instances, fees should be less than maximum in probate proceedings.

Attention is directed to certain criteria applicable to these guidelines, and that the existence of these guidelines does not assure that all fees will adhere to them. The criteria to be considered in setting probate fees include:

- A. The time and labor involved; the novelty, complexity or difficulty of the questions involved and the skill required to perform the services properly. This includes a determination as to how much of the attorney's time was devoted to legal matters and how much devoted to ministerial functions;
- B. The nature and extent of the responsibilities assumed by the attorney and the results obtained. Included herein are the considerations of the identity of the fiduciary and the character of the probate and non-probate transferred assets;
- C. The attorney's expertise in probate matters;
- D. The sufficiency of assets available for legal services. Inherent herein is whether the attorney's duties are expanded by the existence of non-probate assets because of their Inclusion for tax purposes;
- E. It is expected that the total of fees allowed to a fiduciary and attorney in the administration of an estate will never exceed 10% of the gross estate;
- F. In considering all factors, the Court expects that attorneys will discuss fully their proposed fees with their fiduciaries prior to seeking their approval by the Court;
- G. In all events, the timeliness with which the necessary services are performed, consistent with Code requirements, will be a major factor in the Court's approval of probate fees.

A T T O R N E Y F E E S

ESTATES:

Basic fee	\$500.
Gross Estate, first \$100,000	6%
Over \$100,000	4%
Assets passing outside probate estate, but included for tax purposes (Indiana)	3%
Sale of real estate where broker involved	\$500 or 4%
Non probate, included in fed. tax return	Add 3%

Property held jointly not reported on tax returns is not considered part of the gross estate for the purpose of these computations. An additional fee may be charged for services in transferring such property to the survivor based upon time involved.

These percentages contemplate normal estate services, such as the opening of the estate, the qualifying of the fiduciary, the preparation and filing of inventory, the payment of claims, collecting assets, preparing routine petitions, preparing and filing of inheritance tax returns, preparing inheritance tax order, paying the taxes, preparing final report, supplemental reports, orders applicable thereto, and closing estate, and preparing necessary notices.

Probate of will only	\$175.00
Small estate settlement procedure	\$500.00
Wrongful Death Administration:	
Settlement before filing	25%
Settlement after filing/prior to trial	33 1/3%
Trial	50%

GUARDIANSHIPS:

Uncontested minor- no hearing	\$200.00
Minor-hearing	\$500.00
Adult-already adjudicated incapacitated	\$200.00
Adult-hearing	\$500.00
Inventory	\$150.00
Current report, greater of 5% income or	\$300.00
Sale of real estate	\$500.00
Ex parte petition	\$200.00
Petition where hearing involved and other services at prevailing hourly rate.	

TRUSTS:

Docket trust	\$300.00
Current report	\$300.00
Final reports and terminating trust	\$600.00

FIDUCIARY FEES

PROFESSIONAL-ESTATES: Applicable reasonable rates to be reviewed in light of all prevailing circumstances.

NON PROFESSIONAL-ESTATES: An amount not to exceed 50% of attorneys fees

ATTORNEY: When attorney serves as both attorney and fiduciary, and additional fee may be charged not in excess of one-third of the attorney fee allowed, provided additional services have been performed which are normally done by the fiduciary and the assets of the estate warrant the allowance of such additional fee.

GUARDIAN AND TRUSTEE: Greater of 5% of income or prevailing published rates of professional fiduciary to be reviewed in light of all circumstances.

Extraordinary services will be paid on hourly basis at prevailing rates. Fee petitions requesting extraordinary fees must set forth services rendered with specificity.

Extraordinary services depending upon circumstances may include such matters as defending a will, construing a will, contesting claims, contested petitions to sell adjusting tax matters, petitions for instructions, contested heirship determinations.

ALL FEE PETITIONS must specifically set forth the fee requested. If the fees requested fall within the guidelines, a hearing on the same may not be necessary. If all interested persons sign a waiver and consent stating that they have been advised of a request for extraordinary fees or fees exceeding the guidelines, a hearing may not be required.

However, the court reserves the right in all fee petitions, ordinary or extraordinary, falling within or without these guidelines, to require an evidentiary hearing.

STATE OF INDIANA

IN THE FOUNTAIN CIRCUIT COURT

SS:

FOUNTAIN COUNTY

200__

IN RE THE MATTER OF

CAUSE NO. 23COI-_____

W A I V E R A N D C O N S E N T

The undersigned, an interested party in the above entitled matter, hereby states:

1. The maximum fee ordinarily allowed by the Fountain Circuit Court for legal services in this matter would amount to \$ _____.
2. A petition for fees above that amount has been filed and a copy given to me and requesting a fee in the amount of \$ _____.
3. I have examined the requested fee and hereby consent to the allowance of that fee without a hearing and hereby waive any right I might have to a hearing on said requested fee, and hereby request that the Court allow a fee for said requested services In the sum of \$ _____.

Dated this _____ day of _____, 200__.

I hereby affirm the above and foregoing under the pains and penalties proscribed by law for perjury.

APPENDIX C

STATE OF INDIANA

IN THE FOUNTAIN CIRCUIT COURT

SS:

FOUNTAIN COUNTY

200__

IN RE THE ESTATE OF

CAUSE #23C01-_____-EU-_____

NOTICE OF UNSUPERVISED ADMINISTRATION

NOTICE IS HEREBY GIVEN that _____, on the _____ day of _____, 19____, was appointed personal representative of the estate of _____, who died on the _____ day of _____, 19____, [leaving a will] [not leaving a will]. The estate will be administered without court supervision. As a distributee of this estate, you are advised of the following information:

- (1) The personal representative has the authority to take actions concerning the estate without first consulting you.
- (2) The personal representative may be serving without posting a bond with the Court. You have the right to petition the Court to set a bond for your protection.
- (3) The personal representative will not obtain court approval of any action, including the amount of fees for the personal representative or the attorney for the personal representative.
- (4) The personal representative is required to furnish you with a copy of the closing statement that will be filed with the Court, and, if your interests are affected, with a full account in writing of the administration of the estate.
- (5) You must file any objection that you might have to the closing statement within 3 months after the closing statement is filed with the Court if you want the Court to consider your objection.

(6) If an objection is not filed with the Court within 3 months after the filing of the closing statement, the estate is closed automatically, and the Court has no duty to make an audit or an Inquiry.

IF, AT ANY TIME BEFORE THE ESTATE IS CLOSED, YOU HAVE REASON TO BELIEVE THAT THE ADMINISTRATION OF THE ESTATE SHOULD BE SUPERVISED BY THE COURT, YOU HAVE THE RIGHT TO PETITION THE COURT FOR SUPERVISED ADMINISTRATION. If YOU DO NOT UNDERSTAND THIS NOTICE, YOU SHOULD ASK YOUR ATTORNEY TO EXPLAIN IT TO YOU.

Personal Representative

Attorney for Personal Representative

Telephone

Telephone

Dated at Covington, Indiana, this ____ day of _____, 200__.

Clerk, Fountain Circuit Court

APPENDIX D

STATE OF INDIANA

IN THE FOUNTAIN CIRCUIT COURT

SS:

FOUNTAIN COUNTY

19

IN THE MATTER OF
THE GUARDIANSHIP OF

CAUSE # 23COI- _____

PHYSICIAN'S REPORT

The undersigned, a physician licensed to practice medicine in the State of _____,
hereby submits the following report on _____,
an alleged incapacitated person, based upon an examination of said person on the _____
day of _____, 200____.

1. Describe the nature and type of the person's incapacity: _____

_____.

2. Describe the persons mental and physical condition, and if appropriate the persons
educational condition, adaptive behavior and social skills: _____

_____.

3. State your opinion as to whether the person is totally or partially capable of making
personal and financial decisions and the basis for that opinion: _____

_____.

4. State your opinion as to the most appropriate living arrangements for the alleged incapacitated person, and most appropriate treatment or plan of rehabilitation, if any:

_____.

5. Can the alleged incapacitated person appear in Court without injury to his or her/health? _____. If not, why not:_____

_____.

I affirm, under the penalties for perjury, that the above and foregoing report is true.

Name: _____

Printed: _____

Address:_____

Telephone: _____

STATE OF INDIANA

FOUNTAIN CIRCUIT COURT

SS

FOUNTAIN COUNTY

2005 TERM

IN THE MATTER OF

LOCAL RULE PER T.R.79(H)

23C01-0501-MI-

Pursuant to Trial Rule 79 (h) of the Indiana Supreme Court, the Fountain Circuit Court makes the following rules regarding the reassignment to special judges in all matters other than criminal causes in the Fountain Circuit Court:

1) The following individuals have been contacted by the Court and have agreed to serve in the event it becomes necessary to reassign a civil case, or other matter in which a special judge may be appointed, other than a criminal case: Hon. David A. Ault, Judge, Montgomery Superior Court, Hon. Vincent F. Grogg, Senior Judge, Hon. Robert M. Hall, Judge, Senior Judge, Hon. John Rader, Warren Circuit Court, Hon. Peggy Lohorn, Judge of the Montgomery County Court, and Hon. Thomas K. Milligan, Judge of the Montgomery Circuit Court.

2) Said contact was made after an opportunity of consulting with other judges in the administrative district for the Fountain Circuit Court per ADR 3 (a) and after considering the effective use of judicial resources within said administrative district, and the accessibility of said judges per T.R..79(j).

3) Accordingly, the Court now names the following panel to serve as special judge per T.R..79(h): Hon. David A. Ault, Hon. Vincent F. Grogg, Senior Judge, Hon. Robert M. Hall, Senior Judge, Hon. John Rader, Hon. Peggy Lohorn, and Hon. Thomas K. Milligan, to be selected as required on a rotating basis in alphabetical order.

4) In the event the Judge disqualifies herself in any proceeding, other than a criminal cause, involving the Wallace law firm in which the Judge has determined she has a conflict of interest, the cause shall immediately be assigned to Senior Judge Vincent F. Grogg. Should Sr. Judge Grogg be unable to serve for whatever reason, the procedure

specified herein shall be used for the selection of a special judge with the exception that Sr. Judge Grogg shall be removed for the rotation.

5) In the event no judge is available to serve as special judge for the assignment or reassignment of a civil case or other matter in which a special judge may be named, such case shall then be certified to the Indiana Supreme Court for the appointment of a special judge; in the event the presiding judge in a civil matter per this rule should conclude that the unique circumstances presented by the case requires the appointment of a special judge by the Indiana Supreme Court, the presiding judge may request the Indiana Supreme Court for such appointment.

So ORDERED this 3rd day of January 2005.

Judge, Fountain Circuit Court

STATE OF INDIANA

FOUNTAIN CIRCUIT COURT

SS:

FOUNTAIN COUNTY

2005 TERM

IN RE LOCAL RULE

PER C.R.2.2

23C01-0501-MI-

Pursuant to C. R. 2.2 of the Indiana Supreme Court, the Fountain Circuit Court makes the following rule regarding reassignment to special judges in the Fountain Circuit Court: The following individuals have agreed to serve in the event it becomes necessary to reassign a felony or misdemeanor case in the Fountain Circuit Court: Hon. Robert M. Hall, Senior Judge, Hon. John Rader, Judge, Warren Circuit Court, Hon. Bruce V. Stengel, Judge, Vermillion Circuit Court, Hon. Vincent F. Grogg, Senior Judge, Hon. David Ault, Judge, Montgomery Superior Court, and Hon. Thomas Milligan, Judge, Montgomery Circuit Court, Hon. Sam Swaim, Judge, Parke Circuit Court.

(a) By order of the Indiana Supreme Court, pursuant to I.C. 33- 2.1-7-8 temporarily transfers to above judges to the Fountain Circuit Court for the purpose of reassignment of felony and misdemeanor cases.

(b) In the event it becomes necessary to reassign a felony or misdemeanor case, the judges will be reassigned in consecutive order to the above named judges.

(c) In the event no judge is available for assignment or reassignment of a felony or misdemeanor case, such case shall then be certified to the Indiana Supreme Court for the appointment on a special judge. In the event the judge presiding in a felony or misdemeanor case concludes the unique circumstance presented in such proceeding require appointment by the Indiana Supreme Court of a special judge, this presiding Judge may request the Indiana Supreme Court for such appointment.

So ORDERED this 3rd day of January 2005.

Judge, Fountain Circuit Court

STATE OF INDIANA

FOUNTAIN CIRCUIT COURT

SS:

FOUNTAIN COUNTY

2003 TERM

IN THE MATTER OF COURT
APPOINTMENTS AND RULES
OF THE FOUNTAIN CIRCUIT
COURT

23C01-0201-MI-

AMENDED LOCAL RULE PER ADMINISTRATIVE RULE 15,
INDIANA SUPREME COURT

Pursuant to Administrative Rule 15 of the Indiana Supreme Court, the Court now adopts the following local rule by which all court reporter services in Fountain County shall be governed until further order of Court.

- A. All definitions set forth in administrative rule 15 of the Indiana Supreme Court are adopted to the purposes of this rule;
- B. The official court reporter appointed by the Fountain Circuit Court from time to time shall be paid an annual salary as set each year in the budget of the court and approved by the Fountain County Council, and said salary shall be paid for time spent working under the control, direction and direct supervision of the court during any regular work hours, gap hours or overtime hours;
- C. The per page fee for Fountain County and State indigent, and Private transcript preparation is designated as \$3.50 per page, plus an additional labor charge for the hourly rate based upon the court reporter's annual court compensation for time spent binding the transcript and the exhibit binders may be charged. The court reporter shall submit a claim directly to the County for the preparation of the county and state indigent transcript. A minimum fee of \$35.00 per transcript may be charged. The private party in a civil case requesting the transcript must pay 100% of the projected cost in advance of the court reporter starting the transcript and must pay balance of actual cost, if any, prior to taking possession of said transcript;

- D. The court reporter shall be required to report, at least on an annual basis to the Division of State Court Administration on forms designated by the division, all transcript fees of all types received by the court reporter;
- E. The court reporter shall not engage in the private practice through recording of a deposition and/or preparing of the deposition transcript by the use of the court's equipment, work space or supplies;
- F. If the court reporter elects to engage in private practice through recording of depositions and/or preparing of deposition transcripts, the court reporter shall do so using the reporter's own equipment, supplies and work space, and any and all of such private practice shall be conducted outside regular working hours of the court, and on the time of the reporter;
- G. In the event the court reporter prepares County indigent or State indigent transcripts or private transcripts, and the same involves gap and /or overtime hours, the Court and the reporter shall enter into written agreement outlining the manner in which the reporter is to be compensated for such gap and overtime hours, and such compensation shall be in the form of compensatory time off regular work hours.

This local rule is to be submitted to the Indiana Supreme Court Division of State Court Administration for approval, and upon approval, shall become a rule of the court.

Dated this 20th day of October 2003.

Judge, Fountain Circuit Court